IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1387 OF 2003
IN
SUIT NO.1342 OF 2003

Smt. Pushpalata S. Sharma ...Plaintiff
Vs.
Smt. Brij Madanlal Sharma & Ors. ...Defendants

Mr.Amol Doijode for Plaintiff
Mr. R.Dhanuka i/b. Mrs. Anita R. Dhanuka for Defendants

CORAM: SMT.R.S.DALVI,J.
DATED: 8TH JULY, 2005

P.C.

1. The Plaintiff is the sister-in-law of the Defendants. The Plaintiff claims title to the suit flat Nos.1 and 2, servant's quarters and garage at Indrayani, Sophia College Lane, 61-D, Bhulabhai Desai Road, Bombay 400 026. She has applied for appointment of a Court Receiver and for the injunction against transfer alienation and disposal of the suit flat.

2. The Plaintiff claims that these Defendants are her gratuitous licensees in the suit flats.

3. The Defendant No.1 claims to be having the same name as the Plaintiff. It is her case that her maidan name was Pushpalata, which is the Plaintiff's name. Both parties have the same surname.

4. The share-certificates stands in the name of Pushpa S. Sharma. Hence, both the Plaintiffs as well as Defendant No.2 claim title.

5. The title of both these parties would be required to be verified in the suit. Upon the Plaintiff's claim that the suit premises belongs to her and that the Defendants have been gratuitously residing in the suit premises from about 1970, Defendant No.1 has sought to show that both the suit premises belong to her and not the Plaintiff.

6. Defendant NO.1 has relied upon her father's declaration which shows her name as prayed by her and the fact that "Gave" a sum of Rs.99,000/- to his daughter, Defendant No.1 herein for purchase of the said suit flats in 1969. copy of the agreement for sale is not produced by Defenant No.2. It is not annexed to this declaration. How the sum of Rs.99,000/- was paid by her father or "given by the father" to her is also not shown.

7. Defendant No.1 has relied upon several other affidavits to show that her maidan name was Pushpa. All the Deponents would be required to be examined in the suit.

8. Pending the suit the property is required to be protected.

9. The Defendant's Advocate states that the Defendants have entered into a family arrangement that their son in respect of the suit properties. He also states that the Society has yet not transferred the suit flats in the name of their son.

10. The share-certificate is shown to stand in the name of the Plaintiff. Primafacie therefore, the Plaintiff's title is shown. If the Defendant succeeds in the suit in showing that her Maiden name was Pushpa and that the consideration for suit flat was paid by her father as stated in his declaration, the share-certificate in the name of son would be taken to be by DefendantNo.2.

. Hence, the following order.

O R D E R

1. Notice of Motion is made absolute in terms of prayer clause (a). The Defendant shall not get the suit flats transferred to the name of their son or in any other person pending the suit under the family arrangement entered into by them or otherwise. N.O.C.

2. Prayer (b) need not be granted. N.O.C.

(SMT.R.S.DALVI,J.)